

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

MDL No. 2804

Case No. 1:17-md-2804

Judge Dan Aaron Polster

**OPTUMRX, INC. AND EXPRESS SCRIPTS, INC.'S MOTION
TO HOLD THE DECEMBER 18, 2023 TELECONFERENCE
ON THE RECORD WITH A COURT REPORTER**

In accordance with MDL Order 2804-69 (Special Master Appointment Order), Federal Rules of Civil Procedure 53 and 79, and 28 U.S.C. § 753, OptumRx and Express Scripts move the Court to order that the upcoming December 18, 2023 teleconference with Special Master Cohen be held on the record before a court reporter.

DISCUSSION

“All proceedings . . . had in open court” must be recorded “unless the parties with the approval of the judge shall agree specifically to the contrary.” 28 U.S.C. § 753(b)(2). And “such other proceedings . . . as may be requested by any party to the proceeding” must be recorded. 28 U.S.C. § 753(b)(3); *see also United States v. Robinson*, 459 F.2d 1164, 1170 (D.C. Cir. 1972) (per curiam) (proceedings covered by the Act include “bench conferences” and “arguments of counsel”). Section 753(b)’s requirements are “mandatory,” and courts have a “duty” to meet them. *United States v. Gallo*, 763 F.2d 1504, 1530 (6th Cir. 1985). *Pittsburgh v. Simmons*, 729 F.2d 953, 955 (3d Cir. 1984) (“when counsel desires to go on the record, we can find no reason for a judge to decline to do so”).

The December 18 teleconference will cover issues for which OptumRx and Express Scripts want to create a record, including any ongoing disagreements between the parties concerning the

proposed case management order. *See* Dkt. 5268 at 8–9 (Order Resolving Disputes Regarding Proposed CMO) (“The parties should schedule a teleconference with Special Master Cohen on December 18, 2023, to discuss any ongoing disagreements.”) (emphasis omitted). Accordingly, OptumRx and Express Scripts move this Court to order that the December 18 teleconference with Special Master Cohen be held on the record before a court reporter.

December 14, 2023.

Respectfully submitted,

/s/ Brian D. Boone

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CERTIFICATE OF SERVICE

I certify that that on December 14, 2023, a copy of the foregoing was served on all counsel of record by filing the same with the Court's ECF system.

/s/ Brian D. Boone

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